



Department of Development Services  
205 Lawrence Street  
Marietta, Georgia 30060  
Brian Binzer, Director

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**STAFF REVIEW**

**Variance Case #:** V2014-40

**Legistar #:** 20140950

**City Council Hearing:** Wednesday, January 14, 2015 – 7:00 p.m.

**Property Owner:** HD Greene Investments, Inc. and J. C. Cook  
1309 Town Lake Hts.  
Woodstock, GA 30189

**Applicant:** Mr. Jon Campbell, Regional V.P.  
CBS Outdoor, LLC.  
3745 Atlanta Industrial Drive, N. W.  
Atlanta, GA 30331

**Agent:** Scott W. Peters  
Schreeder, Wheeler & Flint, LLP  
1100 Peachtree Street, N.E.  
Suite 800  
Atlanta, GA 30309-4516

**Address:** 1200 Gresham Road

**Land Lot:** 11660      **District:** 16      **Parcel:** 0070

**Council Ward:** 7A      **Existing Zoning:** CRC (Community Retail Commercial)

**Special Exception / Special Use / Variance(s) Requested:**

1. Variance to reduce the rear setback for a billboard support structure from 35' to 22.' §708.16 (H.); §714.04 (G.)(1.); §714.04 (G.)(8.)
2. Variance to reduce the rear setback for billboard sign faces to 19.' §708.16 (H.); §714.04 (G.)(1.); §714.04 (G.)(8.)
3. Variance to reduce the side setback for billboard sign faces to 0.' §708.16 (H.); §714.04 (G.)(1.); §714.04 (G.)(8.)
4. Variance to locate a billboard within 1,000' of other billboards. §714.04 (G.)(5.)
5. Variance to locate a billboard on a substandard lot. §708.16 (H.); §714.04 (G.)(1.); §714.04 (G.)(5.); §704.04
6. Variance to reduce the minimum lot width from 100' to 72.' §708.16 (H.); §714.04 (G.)(1.); §714.04 (G.)(8.)
7. Variance to locate a billboard within 500' of a residential zoning district. §714.04 (G.)(2.)

**Statement of Fact**

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code

because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

**Criteria:**

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

**PICTURES**



**North facing (static) panel – 1200 Gresham Road**



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**Staff Review:**

***As part of its Northwest Corridor Project, the Georgia Department of Transportation (GDOT) will be widening I-75 westward in order to construct elevated, managed lanes. This is resulting in the condemnation of properties, many of which contain legally nonconforming billboards, along the west side of I-75. In this case, the existing billboard is to be acquired by GDOT and removed from the property; and the applicant is requesting multiple variances that would allow a new billboard to be constructed on the 5,190 sq.ft. portion of the property that will not be acquired by GDOT.***

Scott Peters, agent for CBS Outdoor LLC, is requesting variances to allow the relocation of a billboard at 1200 Gresham Road. The property is zoned CRC (Community Retail Commercial) and contains frontage along Chert Road to the west, Gresham Road to the north, and I-75 to the east. Adjacent to the subject property to the south is a vacant, substandard lot zoned OI (Office Institutional).

Section 714.04 (G.) states that “No billboard lawfully in existence on December 11, 2013 shall be altered or moved unless it is made to comply with the provisions of this Division.” Additionally, Section 714.06 (C.)(3.) states that “no structural repairs or changes in the size, shape, location, or design of this sign shall be permitted except to make the sign comply with the requirements of this article.” In order to relocate the sign, the following variances would be necessary:

1. Variance to reduce the rear setback for a billboard support structure from 35’ to 22.’
2. Variance to reduce the rear setback for billboard sign faces to 19.’ Variance to reduce the side setback for billboard sign faces to 0.’
3. Variance to locate a billboard within 1,000’ of other billboards.
4. Variance to locate a billboard on a substandard lot.
5. Variance to reduce the minimum lot width from 100’ to 72.’
6. Variance to locate a billboard within 500’ of a residential zoning district.

It is worth noting that the letter provided by the applicant states that the existing sign is “approximately 70’ tall (above adjoining road grade)” and that they would like to request that the new sign be relocated but “not...to increase the size or height.” The applicant has not provided the specific height of the sign, but Staff would like to point out that zoning regulations limit billboards to 70’ above I-75 road grade. No variance for height has been included with this request. Because the applicant has not listed the existing height, Staff is unclear whether the replaced sign will meet code. The applicant will need to either clarify that the sign will not exceed the height limit or revise his request to add a variance for height.

***As stated above, the existing billboard is to be acquired by GDOT and removed from the property; and the applicant is requesting multiple variances that would allow a new billboard to be constructed on the 5,190 sq.ft. portion of the property that will not be acquired by GDOT.***



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Brian Binzer, Director

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**This request for variances was discussed by City Council on Wednesday October 8, 2014, and there were questions about the area of the property and the possibility of acquiring additional property. After a lengthy discussion the matter was tabled until the next regularly scheduled City Council meeting on Wednesday November 12, 2014. The item was then tabled at the applicant's request to the January 14, 2015 City Council meeting to be discussed at the same time as the rezoning for 130 & 140 Chert Road (Z2015-03).**

## **PUBLIC NOTICE OF VARIANCES**

The City of Marietta hereby gives notice that a public hearing will be held to give consideration to the following variances for a recommendation to the City Council at their meeting on **Wednesday, January 14, 2015, 7:00 p.m.**, City Hall, for a final decision to be made.

**V2014-40 [VARIANCE] CBS OUTDOOR, LLC** request variances for property located in Land Lot 11660, District 16, Parcel 0070, 2<sup>nd</sup> Section, Marietta, Cobb County, Georgia and being known as 1200 Gresham Road, currently zoned CRC (Community Retail Commercial). Variance to reduce the rear setback for a billboard support structure from 35' to 22.'; Variance to reduce the rear setback for billboard sign faces to 19.'; Variance to reduce the side setback for billboard sign faces to 0.'; Variance to locate a billboard within 1,000' of other billboards.; Variance to locate a billboard on a substandard lot.; Variance to reduce the minimum lot width from 100' to 72.'; Variance to locate a billboard within 500' of a residential zoning district. Ward 7A.

A description and plat of the property sought for the rezoning and future land use assignment are on file in the Planning and Zoning Office, City Hall, and is available for inspection between 8:00 A.M. and 5:00 P.M., Monday through Friday. Anyone wishing to attend may do so and be heard relative thereto.

For additional information please call the Planning and Zoning Office (770) 794-5440.

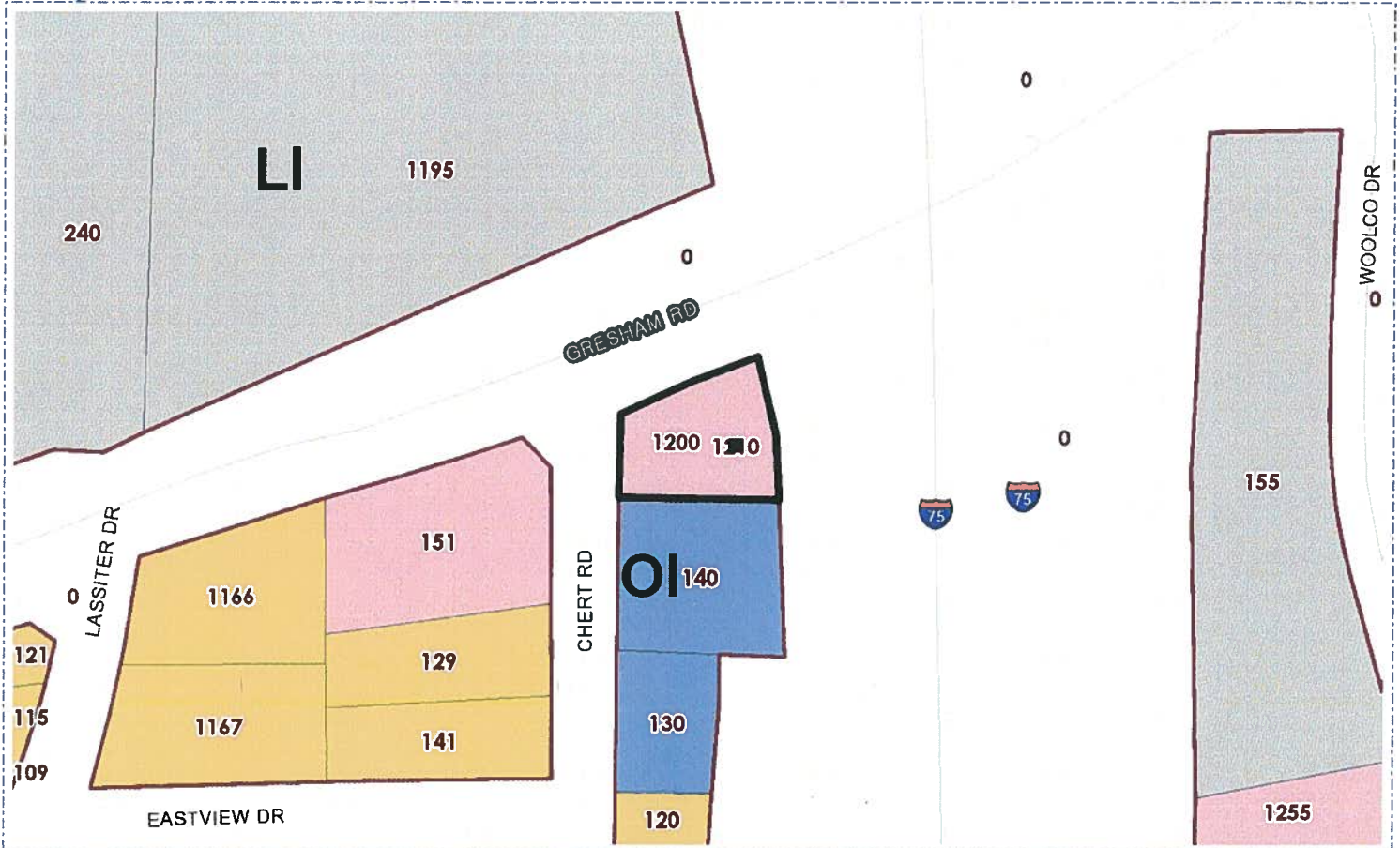
**Accessibility to Meetings:** If you believe you may need the City/BLW to provide special accommodations in order to attend/or participate in any of the above meetings, please call Mr. Dennis Stover, ADA Coordinator, at 770-794-5568 (voice) or 770-794-5560 (TDD) no later than 48 hours before the date of the above meeting.


City of Marietta  
205 Lawrence Street  
Marietta, Georgia 30060



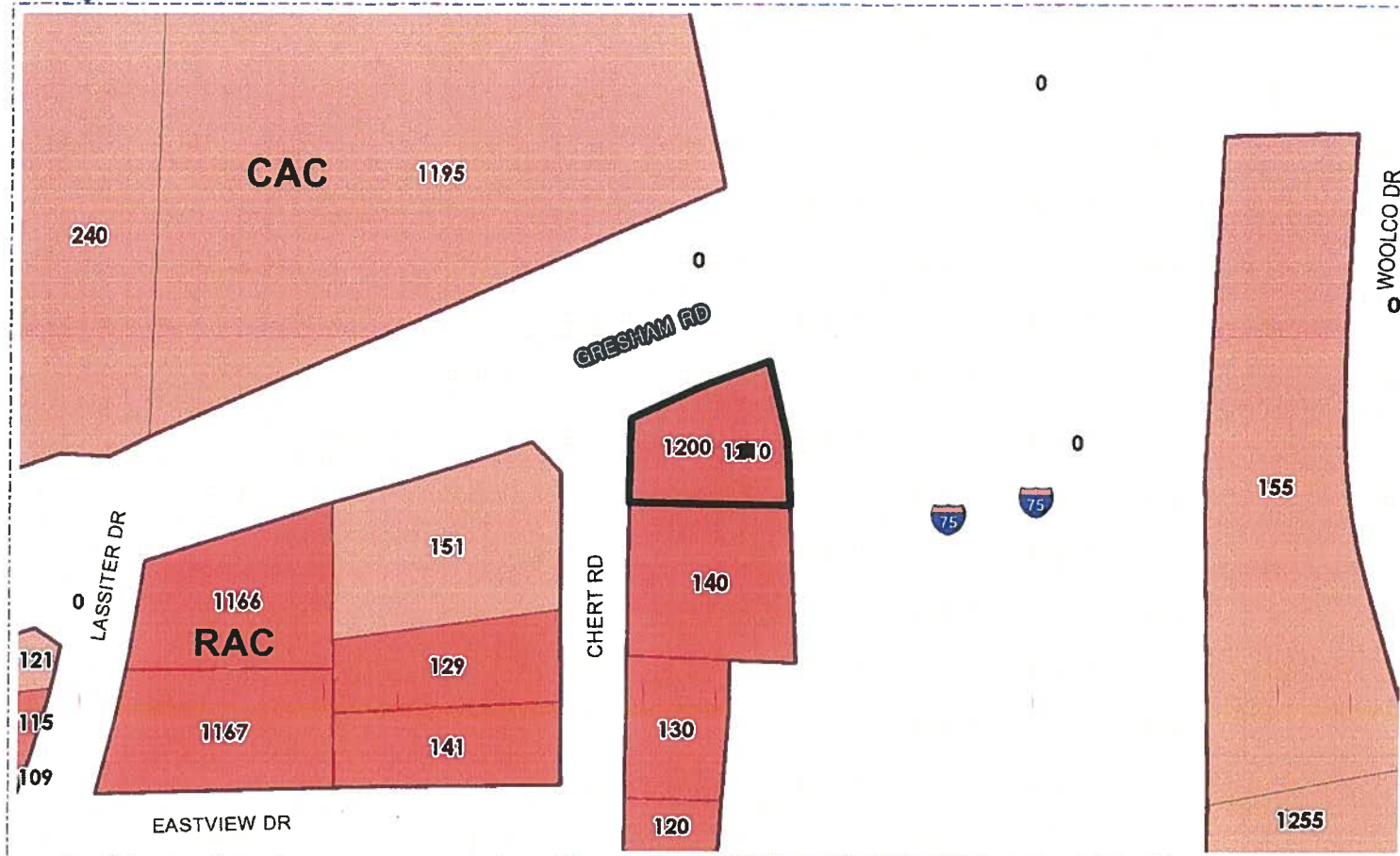




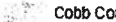













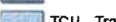
# Variance



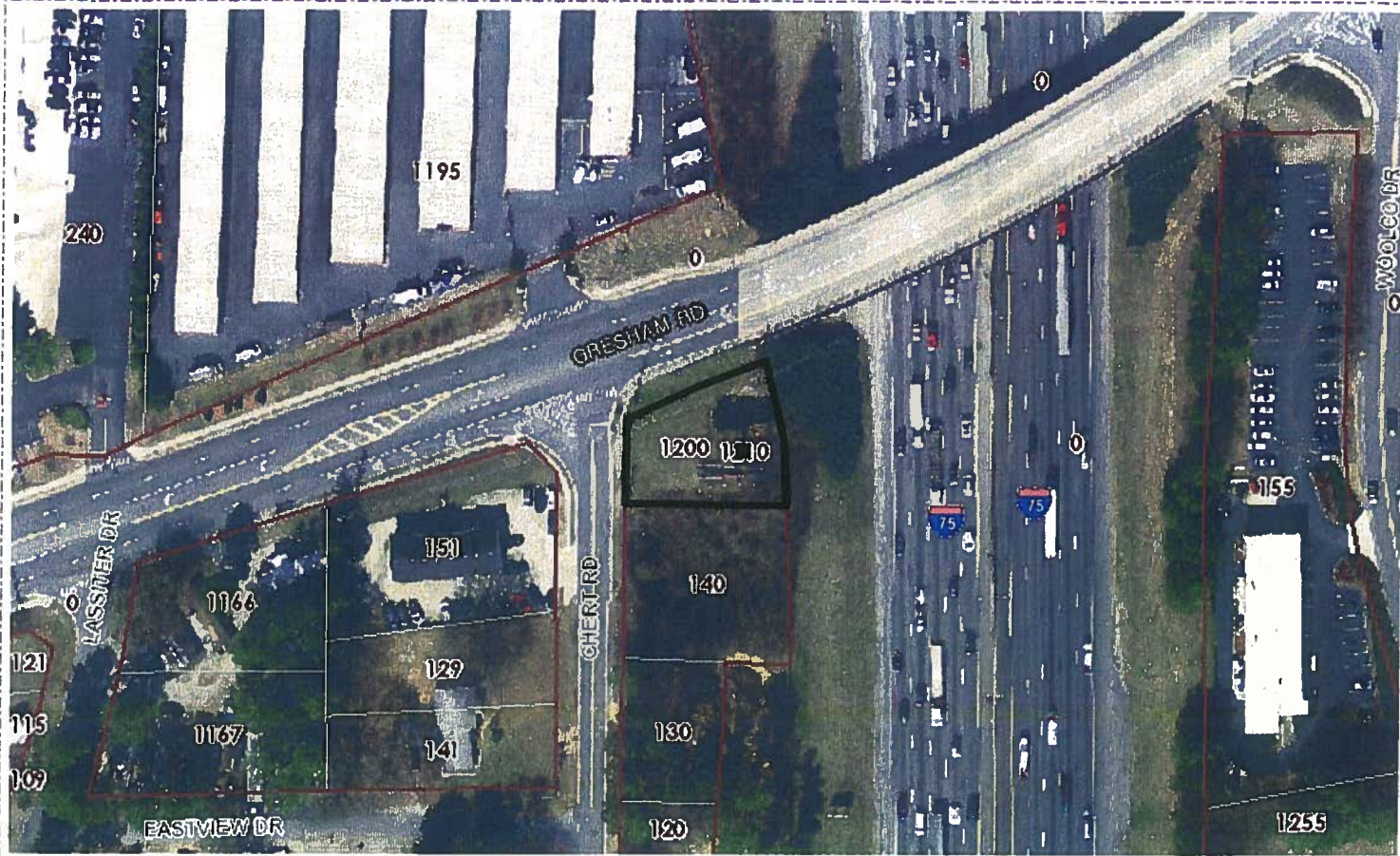
Address	Parcel Number	Acreage	Ward	Zoning	FLU
1200 GRESHAM RD	16116600070	0.219	7A	CRC	RAC
Property Owner: HD Greene Investments & J.C. Cook				<b>Zoning Symbols</b>  Railroads City Limits Cobb County Pockets NA R1 - Single Family Residential (1 unit/acre) R2 - Single Family Residential (2 units/acre) R3 - Single Family Residential (3 units/acre) R4 - Single Family Residential (4 units/acre) RA4 - Single Family Residential - Attached RA6 - Single Family Residential - Attached RA8 - Single Family Residential - Attached MHP - Mobile Home Park PRD-SF - Planned Residential Dev. Single Family RM8 - Multi Family Residential (8 units/acre) RM10 - Multi Family Residential (10 units/acre) RM12 - Multi Family Residential (12 units/acre) RHR - Residential High Rise PRD-MF - Planned Residential Dev. Multi Family NRC - Neighborhood Retail Commercial CRC - Community Retail Commercial RRC - Regional Retail Commercial PCD - Planned Commercial Development LI - Light Industrial HI - Heavy Industrial PID - Planned Industrial Development MXD - Mixed Use Development CBD - Central Business District OIT - Office Institutional Transitional LRO - Low Rise Office OI - Office Institutional OS - Office Services OHR - Office High Rise	
Applicant: CBS Outdoor					
City Council Hearing Date: 1/14/15					
Acquisition Date:					
Case Number: V2014-40					
City of Marietta Planning & Zoning					

# Future Land Use



Address	Parcel Number	Acreage	Ward	Zoning	FLU
1200 GRESHAM RD	16116600070	0.219	7A	CRC	RAC
Planning Commission Hearing Date:				<b>Future Land Use Symbols</b>  Railroads  City Limits  Cobb County Pockets  RAC - Regional Activity Center  CAC - Community Activity Center  NAC - Neighborhood Activity Center  CBD - Central Business District  MXD - Mixed Use Development  CSI - Community Service and Institutional  HDR - High Density Residential  MDR - Medium Density Residential  LDR - Low Density Residential  OSC - Open Space / Conservation  PR - Parks / Recreation  IW - Industrial Warehousing  IM - Industrial Manufacturing  TCU - Transportation and Utilities	
City Council Hearing Date: 1/14/15					
Future Land Use: RAC					
Case Number:					
Comments:					
City of Marietta Planning & Zoning					





Address	Parcel Number	Acreage	Ward	Zoning	FLU
1200 GRESHAM RD	16116600070	0.219	7A	CRC	RAC

**Property Owner:** HD Greene Investments & J.C. Cook

**Applicant:** CBS Outdoor

**City Council Hearing Date:** 1/14/15




**Planning Commission  
Hearing Date:**

**BZA Hearing Date:** **Case Number:** V2014-40

**Comments:**

City of Marietta Planning & Zoning

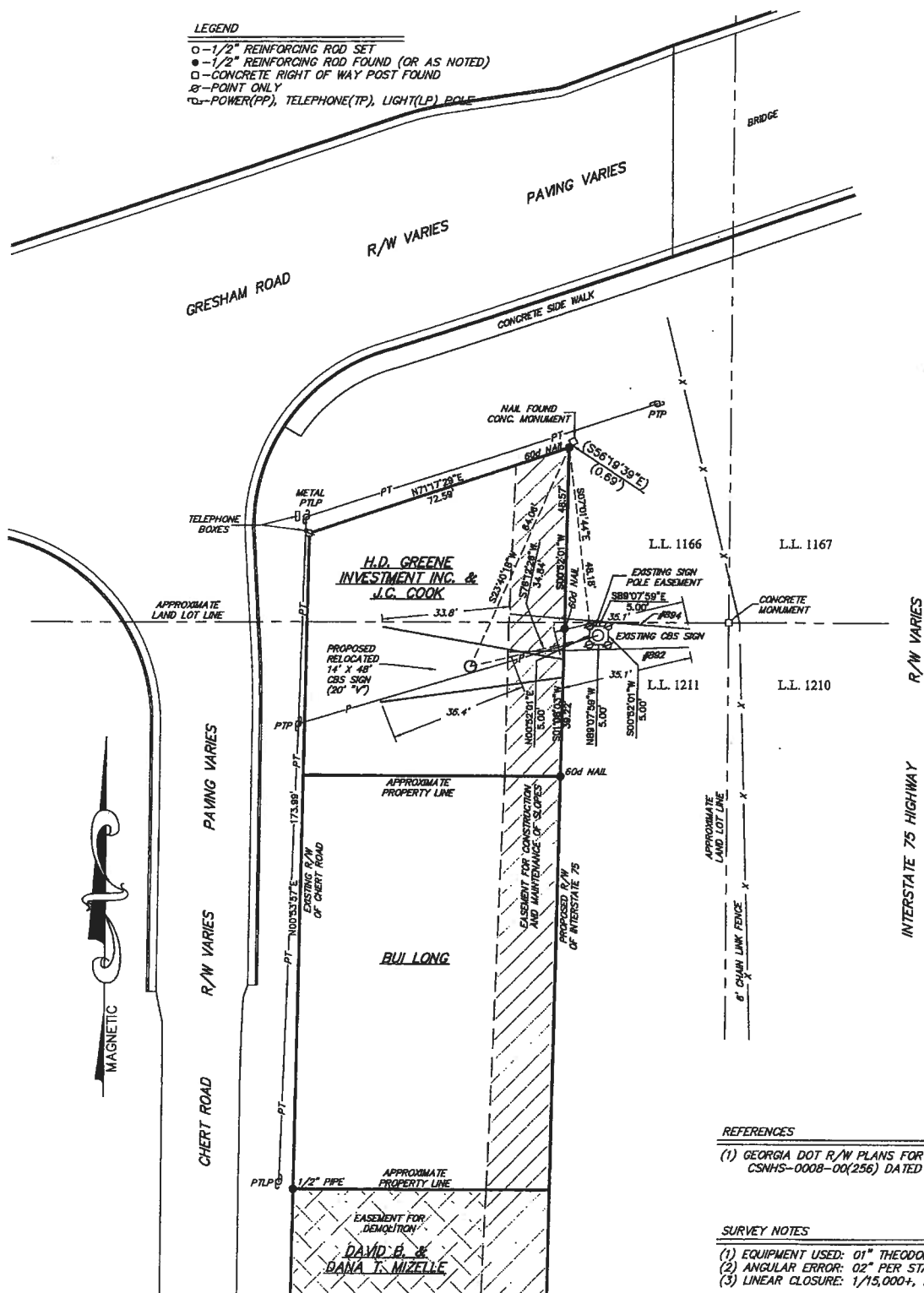
## Legend

-  Railroads
-  City Limits
-  Cobb County Pockets



# LEGEND

- - 1/2" REINFORCING ROD SET
- - 1/2" REINFORCING ROD FOUND (OR AS NOTED)
- - CONCRETE RIGHT OF WAY POST FOUND
- 8" - POINT ONLY
- POWER (PP), TELEPHONE (TP), LIGHT (LP) POLE

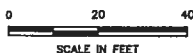
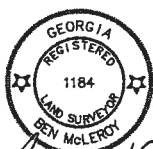


## REFERENCES

- (1) GEORGIA DOT R/W PLANS FOR PROJECT NO. CSNHS-0008-00(256) DATED APRIL 20, 2012.

## SURVEY NOTES

- (1) EQUIPMENT USED: 01" THEODOLITE AND E.D.M.
- (2) ANGULAR ERROR: 02" PER STATION, ADJUSTED
- (3) LINEAR CLOSURE: 1/15,000+, BALANCED ARBITRARILY



SURVEY FOR:			
CBS OUTDOOR			
LAND LOTS 1166, 1177, 1211, & 1210, 16TH DISTRICT, 2ND SECTION			
COUNTY:	COBB	G.M.D.:	STATE: GEORGIA
DATE:	MAY 8, 2014	SCALE:	1"=20'
DWN. BY:	STEPHEN	FILE NO.:	34194-363
FIELDBOOK:	960 & 995	SURVEYED BY:	BEN MCLEROY & ASSOCIATES, INC. 706-548-5873 140 MILL CENTER BLVD. ROSART, GA.

LAW OFFICES  
SCHREEDER, WHEELER & FLINT, LLP  
1100 PEACHTREE STREET, NE  
SUITE 800  
ATLANTA, GEORGIA 30309-4516

(404) 681-3450  
FACSIMILE: (404) 681-1046

Scott W. Peters

E-Mail: [speters@swflp.com](mailto:speters@swflp.com)  
Direct Dial: (404) 954-9836

August 19, 2014

VIA HAND DELIVERY

Mr. Brian Binzer, Director  
Department of Development Services  
City of Marietta  
205 Lawrence Street  
Marietta, GA 30060

RE: Application for Variance – CBS Outdoor, LLC  
1200 Gresham Road – GDOT Parcel 60

Dear Mr. Binzer:

Please accept this letter in support of the application of CBS Outdoor, LLC, in regard to its request to relocate its existing legal non-conforming billboard located at 1200 Gresham Road. This existing outdoor advertising sign, and a significant portion of the property upon which it is located, are being condemned by the Georgia Department of Transportation (“GDOT”) for the I-75 managed lane project. The requested variances are sought to allow relocation of this sign upon the remainder of the property which is not being acquired by GDOT.

GDOT is condemning nearly one-third of the parcel upon which this billboard is presently located. The property is located at the south-eastern corner of Gresham Road and Chert Road, and originally consisted of approximately 9,466 square feet (0.21 acres). The sole improvement on the property is the existing outdoor advertising sign of CBS Outdoor. The property owner is left with a remainder consisting of 5,190 square feet (0.12 acres) which is generally square in shape. The remaining property retains its frontage on both Gresham Road and Chert Road, but the small size of the remaining parcel renders it virtually useless except for an outdoor advertising sign.

The existing sign is an approximately 70’ tall (above adjoining road grade) back to back, 14’ x 48’, monopole, bulletin sign. Both faces of the sign are static. CBS Outdoor possesses permits from both the City of Marietta and GDOT for the subject sign. The existing nonconformities are not the result of any actions on the part of the CBS Outdoor

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Mr. Brian Binzer

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or the property owner, but rather result from changes to the Marietta Sign Ordinance after the original construction of the sign.

In order to preserve its rights and privileges under its existing permits, and to preserve this valuable asset within the City of Marietta, CBS Outdoor seeks the right to relocate this sign on the remainder of the subject property. CBS does not seek to increase the size or height of the sign, but merely desires to relocate its existing sign on the remaining property. If these variances are approved, this will also have the effect of minimizing the just and adequate compensation that must otherwise be paid by GDOT, and thereby save the taxpayers of the State of Georgia (including those residing within the City of Marietta) significant funds. The new sign will be relocated approximately 30' to the west, and 5' south, of its present location in order to remove it from the newly acquired right of way line.

Attached hereto as Exhibit "A" is a Variance Analysis depicting the variances requested to allow the proposed sign to be constructed upon the remainder of this property. As you will note from this analysis, no new non-conformities are created by this relocation, although several of the existing non-conformities are slightly increased as a result of this slight relocation. For example, the minimum lot size remains less than the required 20,000 s.f., and is reduced by approximately 4,275 s.f. as a result of the GDOT condemnation action. In addition, although the sign is not located within 500 feet of a church, school, park, public building, or cemetery, however it is presently located within 144 feet of certain property zoned for Manufactured Housing Park located at 129 Chert Road. The sign will be relocated approximately 33 feet closer to this residentially zoned property after reconstruction, such that after relocation, it will be within 111 feet of this residentially zoned property.

CBS Outdoor shows that the conditions requiring the request for this variance are being caused by GDOT, and not by any action of CBS Outdoor or the property owner. The extraordinary and exceptional circumstances are the result of the actions of GDOT in condemning a significant portion of the property for the I-75 managed lane project, which results in the size of the property being altered significantly and the sign itself being acquired. These alterations are causing a substantial hardship upon CBS Outdoor and the property owner because the current Marietta Sign Ordinance otherwise prohibits the relocation of this sign (or the construction of any new signs in the immediate vicinity), and as a result, CBS Outdoor would not otherwise be permitted to retain its existing rights and privileges under its sign permits unless the requested variances are approved.



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Mr. Brian Binzer

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Further, the property owner would be left with a virtually worthless piece of property if it can not be utilized for an outdoor advertising sign. The property is too small to be utilized for any other purpose, and therefore without the existence of the outdoor advertising sign, the property would have no taxable value. The request of CBS Outdoor is simply to retain its existing rights and privileges to maintain this outdoor advertising sign which is located within 100' of I-75.

CBS Outdoor respectfully requests that this variance application be approved so as to permit the relocation of this existing legal non-conforming sign upon the remainder of this property. Thank you for your consideration in this regard.

Sincerely,



Scott W. Peters

SWP/cal  
Enclosure

## Parcel 60 - Variance Analysis

CBS Outdoor

	Ordinance Requirement	As-Built	As-Proposed
1	Within 100 feet of the right-of-way of Interstate 75.	Yes	Yes
2	Billboards shall also be regulated as a <b>principal use</b> and are required to meet all <b>dimensional standards</b> of the applicable zoning district. CRC setbacks: Min Lot Size: 20,000 sq. ft. Min Lot Width: 100 ft. Max Building Height: 75 ft. Max Floor Area Ratio: 0.50 Max Impervious Surface: 80% Min landscaped area: 15% Front Setback (arterial): 40 ft. Front Setback (collector): 35 ft. Front Setback (local): 35 ft. Side Setback (major): 25 ft. Side Setback (minor): 15 ft. Rear Setback: 35 ft.	Billboard on vacant lot  Lot size: 9466 sq. ft. Lot width: 64.2 ft. Building height: none Floor area ratio: none Impervious surface: 5% Landscaped area: 95% Front setback (local): 54 ft. Side setback (major): 54 ft. Rear setback (I-75): 15 ft.	Billboard on vacant lot  Lot size: 5190 sq. ft. Lot width: 64.2 ft. Max. sign Height: 70 ft. No floor area. Max. impervious surface: 5% Min. landscaped area: 95% Front setback (local): 20 ft. Side setback (major): 30 ft. Rear setback (I-75): 1 ft.
3	No billboard shall be placed within 500 feet of a residential zoning district, church, school, park, public building or cemetery.	144' to 129 Chert Road which is zoned MHP (nearest residential zoned district)	111' to 129 Chert Road which is zoned MHP (nearest residential zoned district)
4	No billboard shall contain a sign area in excess of 672 square feet.	Sign face area is 672 sq. ft.	Sign face area is 672 sq. ft.
5	No billboard shall contain more than 2 faces	2 panel faces.	2 panel faces.
6	No billboard shall be located within a 1,000-foot radius of another billboard	Billboards 472.99 ft. & 1017.03 ft. to north.	Billboards 472.99 ft. & 1020.33 ft. to north.
7	No billboard may exceed 70 feet in height along an interstate as measured from the established road grade at the nearest point of the aforementioned road	~70 ft. over I-75 road grade	70' over I-75 road grade
8	Tree preservation.	N/A	N/A
9	No billboard shall be located or erected on a substandard lot. In addition, billboards shall meet all other zoning district regulations, including required setbacks and lot widths. Support structures shall meet the setback requirement; however sign faces may extend 25% into any required setback.	Existing substandard lot - See dimensions above	Existing substandard lot - See dimensions above.
10	No billboard shall be located or	Billboard only on lot.	Billboard only on lot.

	erected on a lot upon which a building is located if such lot or the building thereon has any sign located thereon		
11	No billboard may be located closer to a permanent structure than a distance that is equal to or greater than the height of the sign	No building.	No building.
12	Billboards shall be permitted in LI, HI, CRC, RRC, and OHR zoning districts. Billboards are prohibited in all other zoning districts	Zoned CRC.	Zoned CRC
13	Billboards shall not be permitted within any right-of-way or easement provided for a railroad	N/A	N/A



## CONSTITUTIONAL OBJECTIONS

COME NOW CBS Outdoor, LLC and landowner HD Greene Investments, Inc. and J.C. Cook (collectively, the “Applicants”) and set forth their constitutional objections in the event their variance application is denied.

The Applicants seek variances in the City of Marietta, Georgia, as described in the foregoing application. The present classification of the subject property without the granting of such variances constitutes a taking of the property without payment of adequate compensation. Lamar Adver. of South Georgia v. City of Albany, 260 Ga. 46, 389 S.E.2d 216 (1990). Moreover, the entire Marietta sign code (division 714 of the Marietta Zoning Ordinance) and specifically sections 714.04(G) and 714.06 of the Marietta Zoning Code, violate the First Amendment to the Constitution of the United States and Article I, Section I, Paragraph V (Free Speech) of the Constitution of the State of Georgia. The sign code impermissibly “evidences hostility to signs in general and to commercial signs in particular.” Fulton County v. Galberaith, 282 Ga. 314, 647 S.E.2d 24 (2007). Sections 714.04(G) and 714.06 of the zoning code do not directly advance any governmental interest or, in the alternative, regulate speech more extensively than necessary to serve any government interest. Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 101 S.Ct. 2882, 69 L. Ed. 2d 800 (1981); Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York, 447 U.S. 557, 100 S.Ct. 2343, 65 L. Ed. 2d 341 (1980); Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, Inc., 266 Ga. 293, 467 S.E.2d 875 (1996). “To ban any type of commercial speech, the government must have a substantial reason for doing so. A ban on commercial speech must directly

advance the asserted governmental interest, and the prohibition must be tailored so that it sweeps no more broadly than is necessary to achieve that interest.” Fulton County v. Galberaith, 282 Ga. at 318. A government restricting speech “must draw its regulations to suppress no more speech than is necessary to achieve its goals.” Coffey v. Fayette County, 279 Ga. 111, 610 S.E.2d 41 (2005). The Marietta sign restrictions violate these standards.

In addition, the arbitrary and capricious denial of the variance application would constitute a violation of due process and equal protection. Tuggle v. Manning, 244 Ga. 29, 159 S.E.2d 703 (1968). The denial of the variance application would not bear a substantial relation to the public health, safety, morals or general welfare. As a result, the denial of the variance application would be arbitrary and capricious. Sellers v. Cherokee County, 254 Ga. 496, 330 S.E.2d 882 (1985).

Further, the variance process set forth in section 714.04(G)(16) violates the applicant’s right to due process, equal protection, and free speech. Specifically, in order for a variance procedure to be valid, it must be “drawn with specific specificity to apprise an applicant of common intelligence of the standards which he should anticipate the governing body will consider” at the time the application is reviewed. Dinsmore Development Co., Inc. v. Cherokee County, 260 Ga. 727, 728 (1990). (Property owner entitled to special use permit for solid waste landfill where ordinance lacked sufficient objective guidelines to base approval or denial of permit); see also, Arras v. Herrin, 255 Ga. 11 (1985) (applicant entitled to beer and wine license where Board of Commissioners had absolute discretion, to approve or deny application permit); and FSL Corporation v.

Herrington, 262 Ga. 725 (1993) (applicant entitled to special use permit for sanitary landfill where county ordinance provided no objective criteria for approval or denial thereof). This is especially true where issues of free speech are involved because the government is prohibited from deciding who may speak and who may not based upon the content of the speech or the viewpoint of the speaker. City of Lakewood v. Plain Dealer Publishing Co., 486 U.S 750, 764 (1998).

If the Applicants' variance application is denied, their rights under the First and Fourteenth Amendments to the Constitution of the United States and under Article I, Section I, Paragraph I (Due Process); Article I, Section III, Paragraph I (Eminent Domain); Article I, Section I, Paragraph II (Equal Protection); and Article I, Section I, Paragraph V (Free Speech) of the Constitution of the State of Georgia will be violated. Denial of the application will also constitute an improper exercise of the police power.

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